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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

In the Matter of ALDEN A. et al.,
Persons Coming Under the Juvenile Court
Law.

B234281
(Los Angeles County
Super. Ct. No. CK86859)

MONICA L.,

Defendant and Appellant,

v.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN AND
FAMILY SERVICES,

Plaintiff and Respondent.

APPEAL from a judgment of the Superior Court of Los Angeles County. Tim Saito, Judge. Affirmed.

Patti L. Dikes, under appointment by the Court of Appeal, for Defendant and Appellant.

Andrea Sheridan Ordin, County Counsel, James M. Owens, Assistant County Counsel, and Jeanette Cauble, Senior Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

Appellant Monica L. appeals from the juvenile court's jurisdictional and dispositional orders declaring her children, Alden A. and Jessie C., dependents of the court and removing them from her custody. Monica L. argues that there was insufficient evidence to support the juvenile court's findings that: (1) Jessie C. qualified as a dependent of the court under Welfare and Institutions Code section 300; (2) Alden A. qualified as a dependent of the court under section 300, subdivision (j); and (3) the children would be at substantial risk of harm if returned to Monica L.'s custody and there were no reasonable means by which the children could be protected other than removal. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

A. Initial Investigation, Section 300 Petition and Detention Hearing

1. Initial investigation

In February of 2011, Monica L. (Mother) had custody of her 17-year-old son, Alden A., and her nine-year-old daughter, Jessie C. Alden lived with Mother but spent many nights with his great grandmother, Victoria D. Alden's father had not been in Alden's life since his infancy. Jessie C. lived with Mother during weekends and lived with her father, Jesus C., during weekdays.

On February 19, 2011, the Department of Children and Family Services (DCFS) received a referral alleging that Mother had physically abused the children. According to the referral, Mother had pushed Alden during an argument, which caused him to fall onto a glass fish tank. Shortly after receiving the referral, a social worker interviewed Alden A. at his high school.

Alden informed the social worker that he had a confrontation with Mother on February 19, which began after she asked him to sweep the floor. Alden stated that he talked back to Mother and she got angry. Mother then pushed Alden, causing him to fall backwards onto an empty fish tank. The fish tank shattered and the glass lacerated Alden's right arm. After Alden fell, Mother looked at him, told him to call his great

grandmother, Victoria, and then walked away. Alden called Victoria, who came to pick him up. Victoria took Alden to a police station to report the incident. She then took him to an emergency room, where he received 12 stitches on his arm. Mother was subsequently arrested.

Alden told the social worker that Mother had a temper, but this was the worst he had ever seen it. He also stated that Mother did not use substances or have any mental illness, but “‘just gets angry easily.’” Alden reported that “when [Mother] g[ot] angry,” she punched him, slapped him and hit him with “cords, a hangar (*sic*), or ‘whatever she can get her hands on.’” Although Mother used to hit Alden “about every other day,” Alden said she did so less frequently now.

Alden also stated that Mother hit and slapped his sister Jessie, “but not as badly as she hits him.” According to Alden, one of the reasons Jessie lived with her father during the week was because of “the hitting.” Alden said that, despite such conduct, he was not afraid of Mother and hoped he would be able to continue living with her.

The social worker also interviewed Jessie, who was in the house at the time of the February 19 incident. Jessie said that although she did not see what happened, she heard Mother and her brother fighting, and then heard a crash. When she went to go look, she saw her brother on the floor and a broken fish tank. She was scared and started crying. Jessie informed the social worker that Mother spanked her on the buttocks with an open hand, which caused pain but never left a mark. She also stated that she had never been slapped, pushed, or kicked by Mother, and that she was not afraid of her.

Jessie’s father, Jesus, told the social worker that he had no knowledge of Mother ever hitting Jessie or Alden. He also denied that Jessie lived with him because she had been physically abused by Mother. According to Jesus, Jessie began staying with him during the week so that Mother could focus “on school and dealing with Alden.” Jesus said that Alden was rebellious and often clashed with Mother. Overall, however, he described Mother as a “good mother” who Jessie loved very much.

The social worker also interviewed Alden’s great grandmother, Victoria D. Victoria stated that Alden called her on February 19 and said he had gotten into a fight

with Mother and was injured. Alden also informed Victoria that Mother had threatened to call the police. Victoria picked Alden up and brought him to a police station so that he could “tell his side of the story.” Victoria also took Alden to the hospital.

Victoria told the social worker this was not the first time Mother had acted aggressively toward Alden. Victoria alleged that Mother had hit Alden and Jessie in the past, but “mainly acts violently towards Alden.” Victoria also said Mother had hit, slapped and punched Alden. When family members would try to intervene, Mother would say that Alden was her son and she would determine how to teach him and how to discipline him. Victoria stated that Mother had also hit Jessie and would “yank [her] hair if she’s not listening.”

Although Victoria believed Mother was a “good mother,” she had concerns about Alden living in the house. Victoria stated that Mother ““tries really hard to care for her kids but she has a short temper and it seems to be getting worse.”” Victoria told the social worker that that she was interested in caring for Alden, who frequently stayed at her house.

The social worker also interviewed Mother, who stated that she had been having trouble with Alden since he started high school. Alden’s grades had “slipped drastically” and he “had a lot of problems with his attendance.” Less than a year earlier, Alden had been caught in school under the influence of ecstasy and was required to complete a substance abuse program. Mother said that Alden was a “good kid” and that they normally got along until she asked him to help do chores. At that point, Alden would become “disrespectful” and refuse to do what Mother asked.

Mother denied that she was “often physically aggressive towards her children” and said she had never kicked or punched Alden. She admitted, however, that she slapped him during the February 19 argument. Mother stated that Alden became highly disrespectful and was yelling, which caused her to “lose control.”

When asked to discuss the incident that led to Alden’s injury, Mother explained that, on the day in question, her boyfriend and his children spent the day at her house. After they left, she asked Alden to help sweep. Alden refused and talked back to her,

saying that he didn't have to do anything she told him to do. Mother threatened to take away Alden's phone and he became upset. Mother tried to get past Alden in the hallway doorway, but he was blocking her. Mother then pushed Alden, who lost his balance and fell backwards onto the fish tank. After Alden fell, Mother left the house with Jessie to "cool off." When Mother and Jessie returned to the house, Victoria had already picked up Alden. Mother stated that she had not intended to harm Alden and regretted that the incident had occurred. She also alleged that she was not aware that Alden was injured until her arrest.

Mother said she has always had "a problem raising Alden with Victoria's interference." According to Mother, Victoria was overprotective of Alden and had opinions as to how Mother should be raising her son. Mother complained that, on one occasion, she had taken away Alden's phone for disciplinary reasons and Victoria immediately bought him a new one.

Mother told the social worker that she had been arrested as a result of the incident and been ordered to remain 100 yards away from Alden. She said that she was not comfortable with Alden returning home because she felt "hurt" and "betrayed." However, she also hoped she and Alden would get help and "and work on things on their own before coming back together as a family again."

Finally, the social worker interviewed Mother's landlords, who said that they had never witnessed Mother hit or yell at her children. The landlords described Mother and her children as part of their family and stated that Mother was a good mother who tried her hardest. Although the landlords acknowledged that Mother struggled to deal with Alden, they said he was not a "bad kid" but did not "always listen to his mother."

2. Initial detention

a. Section 300 petition and detention report

On March 4, 2011, DCFS filed a petition alleging that Alden and Jessie fell within the jurisdiction of the juvenile court pursuant to Welfare and Institutions Code section

300, subdivisions (a), (b) and (j).¹ The petition included two identical allegations in support of each subdivision:

[Mother] physically abused the child Alden. On or about 02/19/2011, the mother forcibly pushed the child, causing the child to fall backwards into a fish tank which shattered. The child sustained bleeding lacerations to the child's arm requiring emergency medical care, including multiple stitches. On prior occasions, the mother struck the child's body with the mother's fists, hands, cords and hangers. Such physical abuse was excessive and caused the child unreasonable pain and suffering. Such physical abuse of the child by the mother endangers the child's physical health and safety and places the child and the child's sibling, Jessie at risk of physical, harm, damage, danger, and physical abuse.

[Mother] physically abused the child Jessie. On prior occasions, the mother struck the child's face with the mother's hands. On prior occasions, the mother pulled the child's hair. Such physical abuse was excessive and caused the child unreasonable pain and suffering. Such physical abuse of the child by the mother endangers the child's physical health and safety and places the child and the child's sibling, Alden at risk of physical[] harm, damage, danger, and physical abuse.

The petition also contained allegations against Alden's father, who had been absence from Alden's life since his infancy.² The petition did not include any allegations against Jessie's father.

DCFS filed a detention report in support of the petition, which contained a summary of the interviews conducted during its initial investigation. The report indicated

¹ Unless otherwise indicated, all further statutory citations are to the Welfare and Institutions Code.

² The petition included allegations against Alden's father under section 300, subdivisions (b) and (g). Alden's father never appeared in the proceedings and he is not a party to this appeal.

that the family had a single prior referral alleging that Alden had been hit by mother's boyfriend with a belt. The allegation, which occurred in 1998, was deemed inconclusive.

The detention report concluded that leaving the children with Mother would present a substantial danger to their health and recommended that they be removed from her custody. The report further recommended that Alden be placed in Victoria's home, and that Jessie continue to live with Jesus.

b. Initial detention hearing

At the detention hearing, Mother entered a general denial but elected not to be heard on the issue of detention. The court ruled that there was prima facie evidence "for detaining the child [*sic*] and showing that the child [*sic*] is a person described under Welfare and Institutions Code 300." The court also found that, pursuant to section 319, leaving Jessie or Alden in the home of Mother would be "contrary to the children's welfare and a substantial danger exists to the physical, emotional health of the children, and there's no reasonable means by which the children's physical or emotional health may be protected without removing them from the parent's custody." The court clarified that, for the purposes of Jessie, all factual findings related to Mother only, and not to Jessie's father.

The court ordered temporary placement and care of the children with DCFS, pending further orders of the court. Alden was to remain detained and placed with Victoria, while Jessie was to be released to her father. Mother was given visitation rights to the extent they did not conflict with the temporary restraining order entered against her in the criminal matter regarding the February 19 incident.

The court scheduled an adjudicatory hearing on for May 2, 2011.

B. Jurisdictional/Dispositional Report and Adjudication of Section 300 Petition

1. The Jurisdictional/Disposition Report

On April 7, 2011, DCFS filed a "Jurisdiction/Disposition Report" indicating that, since filing the detention report, the Department had conducted additional interviews of Alden, Jessie, Mother, Jesus and Victoria.

a. Summary of additional interviews

i. Interviews with the children

Alden told the social worker that “there have been times” when Mother had physically abused him because “she ‘has a temper [and] can’t control it.’” He also stated that Mother had slapped him in the face because “he ‘stood up to her,’” which made her angry. According to Alden, on past occasions, Mother hit him with fists, open hands, cords and hangers, which had left marks and bruises. Alden stated that, when Mother hit him, he did not try to fight back because she would “take[] it too far.”

In describing the incident that occurred on February 19, Alden said that his Mother began an argument with him, and then started yelling and hitting him. According to Alden, Mother said she was going to throw away his clothes and then grabbed a hand full of his clothing. She then pushed Alden, which caused him to fall on to the fish tank. Alden stated that after Mother saw him bleeding, “she didn’t do anything, didn’t care about the bleeding.” Mother said she was going to call the police and have them pick Alden up.

Alden also said that Mother had hit Jessie in the past and that he had seen Mother pull Jessie’s hair and slap her in the face. He also said there were times Jessie would come home and say she was worried Mother was going to hit her for not doing her homework. Sometimes Alden tried to stop his Mother from hitting his sister, telling Mother “that’s enough stop hitting my sister.” When asked how many times he had seen his mother hit Jessie, Alden said “a lot.” Although Alden had never seen Jessie suffer bruising as a result of being hit by Mother, he had seen “imprints on her arm that appear[ed] to be [from] their mother grabbing her.”

Alden indicated that he would like to reunify with Mother at some point in the future, but would like to do so gradually. He also said he would like to resume visiting with her as soon as possible.

DCFS also re-interviewed Jessie, who said that Mother hit Alden when he refused to do chores, which happened “a lot” because “he wouldn’t listen.” She also said that, on February 19, Alden and Mother began arguing because Mother wanted him to sweep

and he wanted to watch TV. When asked whether Mother ever hit her, Jessie said “sometimes when I did something bad,” but explained that it was always with “an open hand on the buttocks.” Jessie said she had never been hit anywhere else and had never been struck with a belt. She also denied that Mother had ever pulled her hair.

ii. Interview with parents and great grandmother

Mother told the social worker that although she had struck Alden in the past, she had never harmed him in any way. Mother admitted that she had slapped her son and hit him with a hanger on one occasion, but said she had never struck him with her fist or with cords. Mother explained that, when disciplining Alden, she had to “be the upper authority . . . [and] shake him up a little bit.” She also said that when Alden sees that “she ‘means business,’ he’ll back off.”

In describing the incident that occurred on February 19, Mother said she asked Alden to help sweep and he “‘got mouthy’ so she slapped him.” Mother then tried to take Alden’s phone away and told him to leave, saying “‘I’m gonna get your shit and pack it up . . . you need to go.’” Alden tried to pull his clothes away from Mother and she pushed him out of the way. He then slipped and fell into the fish tank. Mother stated that she did not see any blood and immediately got her car keys and left with Jessie.

Mother said Alden was diagnosed with ADHD at a young age and was prescribed Ritalin. She also said he was born with a birth defect in his stomach and had “‘a cloud on his brain,’” which doctors said might affect his learning. Mother alleged that she had a good relationship with her son, but said he is selfish and needs to be more responsible. She also blamed many of her problems with Alden on Victoria’s intermeddling.

In regard to Jessie, Mother admitted that she had spanked her daughter, but said she had never struck her or pulled her hair. She also said that Jessie had never given her a hard time. According to Mother, all she had to do was raise her voice and Jessie “‘will know she means business.’”

Mother said she was visiting with Jessie once a week, for about two to three hours per visit. She was not currently visiting with Alden because of a temporary restraining

order put in place by the criminal court. Mother stated that she had not yet enrolled in any type of counseling, but believed she would benefit from therapy.

Jessie's father, Jesus, told the social worker he had no knowledge of Mother physically abusing the children in any way. He also said that Jessie had never mentioned any physical abuse. According to Jesus, Jessie came to live with him in January because he wanted to spend more time with his daughter and enroll her in sports and cheerleading. Jesus also expressed concern that, when he would call Mother's house at night, nobody would be home even though Jessie should be in bed sleeping. Jesus said that Mother's visits with Jessie were going well and that she talked to Jessie on the phone almost every day.

Victoria informed the social worker that she was uncomfortable discussing what occurred in February, which she described as "'the straw that broke the camel's back.'" She stated that although Mother was a "very smart and beautiful person," she had "a lot of anger." Victoria also said that, at some point, Mother had kicked Alden out of the house and he began living with Victoria.

Victoria also reported that said she had seen Mother pull Jessie's hair and hit the child with an open hand. She said that, since Jessie moved in with her father, Jessie's grades had improved significantly.

b. Social worker's assessment and recommendations

The social worker concluded that although Mother and Alden blamed each other "for the problems that plague the family, it appears they both are responsible for the matter currently before the court." The social worker noted that Alden "apparently becomes difficult or oppositional when asked to do his chores or accept responsibility for his behavior." However, "Alden would not have been injured if his mother hadn't become physical with him by pushing him into the fish tank."

The social worker expressed concern that Mother was "quick to anger and resorts to physical abuse when regular discipline is ineffective." During the interview, Mother appeared to be in "denial" about her behavior and took "little if any responsibility for her action, instead blaming Alden and his maternal great grandmother for the matter . . .

before the court.” The social worker also believed that Mother “attempted to justify [her behavior], stating that when she has become physical toward Alden she has to be the ‘upper authority’ and does so to ‘shake him up. . . .’” The social worker also observed that, “the fact that Jessie began living with her father in January, and that Alden lived on and off with Victoria suggests that mother is struggling with being a parent.

The social worker stated that although Alden had reported that Mother physically abused Jessie, DCFS was unable to confirm that allegation. The child Jessie stated that her mother has only spanked her with an open hand and never struck her or pulled her hair. The social worker emphasized, however, that “just because Jess wasn’t physically abused doesn’t mean she hasn’t suffered any harm while residing with her mother and Alden. [¶] Any small child growing up in a violent environment is going to be affected to some degree and Jessie appears no different. [¶] It’s no accident that her school status has improved since going to live with her father, and when asked where she would like to live if given the choice Jessie stated she would like to live with her father because ‘I don’t like the fighting’ that was taking place at her mother’s home.”

The social worker noted that Jessie’s father “presented as a mature and stable individual who is doing a good job of raising Jessie” and “appears to have a good perception of his needs as he is a non-offending parent.”

The report recommended that, based on the evidence gathered through the interviews, the children should remain where they were currently placed and that Mother should be offered reunification services. The report also recommended anger management and parenting classes for Mother, counseling for Alden and parenting classes for Jesus.

2. Last minute information

Five days prior to the adjudicatory hearing, DCFS filed a last minute information indicating that Jessie and her father, Jesus, were both agreeable to having jurisdiction over Jessie terminated and having her remain in the care of her father. Jesus said he would continue to address all of Jessie’s needs and ensure that Mother would continue to

have regular visitation with her daughter. DCFS recommended that the court terminate jurisdiction over Jessie and place her under the care of her father.

3. Jurisdictional and dispositional hearing

At the May 2 hearing, the court admitted, without objection, the detention report, the jurisdictional/disposition report and the last minute information. Mother asked the court to strike the subdivision (a) count “as to [Jessie].” The parties submitted on the remainder of the allegations.

The court sustained the a-1, b-1 and j-1 allegations, which pertained to Alden. The court explained that “the child Alden has given detailed accounts of abuse from his mother. Sibling Jessie also corroborates and stated that the mother would hit Alden for various reasons, including not doing chores. Mother herself admitted to hitting Alden in order to be an authority figure.”

In regard to the allegations pertaining to Mother’s abuse of Jessie, the court struck a-2, but sustained b-2 and j-2, explaining: “Again, based on the evidence in this case, the court finds that the allegations were corroborated by sibling Alden, stated has seen [*sic*] the mother slap Jessie and hit Jessie and has on one occasion tried to intercede on his sibling’s behalf. [¶] Jessie said that her mother would in fact strike her when she did something bad. But would only hit her on the buttocks. Mother only admitted to spanking Jessie. That’s why in the case, the court did not find that it rises to the level of an a-2 count.”

The court then inquired whether there was any objection to proceeding to disposition. After the parties agreed to proceed, the court declared the children “dependents of the court under [section] 300.” The court also found “by clear and convincing evidence that pursuant to 361(c) . . . in regards to [Alden], there’s a substantial danger if the child were returned to the home to the physical health, safety protection, or physical emotional well-being of the child and there are no reasonable means by which the child’s physical health can be protected without removing the child from the parent’s custody. [¶] These finding are also as to [Jessie], only as to the mother in this case.”

The court provided reunification services to Mother and ordered parent education, conjoint counseling with Alden and individual anger management counseling. The court ordered Alden to be placed under the care of DCFS for suitable placement and gave Mother visitation rights.

The court, however, terminated jurisdiction over Jessie “pending submission of a family law order” providing father physical custody of the child. Mother was granted visitation with Jessie and permitted to seek joint legal custody in family court. Mother filed a timely appeal.

DISCUSSION

On appeal, Mother argues that there was insufficient evidence to support the juvenile court’s jurisdictional orders or its dispositional order removing the children from her home.

A. The Juvenile Court’s Jurisdictional Order is Supported by Substantial Evidence

Mother contends that there was insufficient evidence to support the juvenile court’s findings that: (1) Jessie qualified as a dependent child under section 300; and (2) Alden qualified as a dependent child under section 300, subdivision (j).

1. Standard of review

We review the juvenile court’s jurisdictional findings for substantial evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1653-1654.) “The term “substantial evidence” means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]’ [Citation.] ‘In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions for the trier of fact. [Citation.] In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]’ [Citation.]” (*In re E.B.* (2010) 184 Cal.App.4th 568, 574-575.) If there is substantial evidence to support the juvenile court’s order, we must

uphold the order even if other evidence supports a contrary conclusion. (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251 (*Megan S.*).

2. *The juvenile court's jurisdictional orders were supported by substantial evidence*

a. *Jurisdiction over Jessie was proper under subdivision (j)*

The juvenile court concluded that it had jurisdiction over Jessie under section 300, subdivisions (b) and (j). We first consider subdivision (j), which applies when “[t]he child’s sibling has been abused or neglected . . . and there is a substantial risk that the child will be abused or neglected . . .” (§ 300, subd. (j).) Thus, “section 300, subdivision (j) has two elements: first, that the minor’s sibling has been abused or neglected, and second, that there is a substantial risk that the minor will be abused or neglected.” (*In re Ashley B.* (2011) 202 Cal.App.4th 968, 981 (*Ashley B.*))

Mother does not dispute that there is substantial evidence to support the juvenile court’s finding that she abused or neglected Jessie’s sibling, Alden. A review of the record supports this concession. Mother admitted that, on February 19, she pushed Alden, which caused him to fall onto a glass fish tank. Although Alden was lying in shattered glass and bleeding from his arm, Mother did nothing to help him; instead, she told him to call Victoria and immediately left the house. Alden stated that, on numerous prior occasions, Mother had slapped and punched him. She had also struck him with cords, hangers and ““anything else she could get her hands on.”” Some of these beatings left bruises or other marks. Victoria corroborated Alden’s statements, telling DCFS that the February 19 incident was not the first time Mother had “act[ed] violently toward Alden.” Victoria had seen Mother hit Alden and had concerns about him remaining in the house. Alden and Victoria’s statements constitute substantial evidence that Mother abused or neglected Alden.

The second element of subdivision (j) required evidence showing that there was a substantial risk that Mother would abuse or neglect Jessie. When evaluating whether there is a substantial risk to the child, the juvenile court “shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the

nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative” (§ 300, subd. (j).) Subdivision (j), however, applies only if there is “a current risk of abuse.”

(*In re Carlos T.* (2009) 174 Cal.App.4th 795, 803 [“Clearly, subdivision (j) requires a finding of a current risk of abuse”].) Although “evidence of past conduct may be probative of current conditions, . . . the past infliction of physical harm by a caretaker, standing alone, does not establish a substantial risk of physical harm; ‘[t]here must be some reason to believe the acts may continue in the future.’ [Citations.]”

(*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824 (*Rocco M.*).

Mother contends that the “substantial risk” element was not satisfied here because “there was insufficient evidence of a nexus between mother’s treatment of Alden and an alleged risk of future abuse or neglect to Jessie.” We disagree. The DCFS reports contain evidence indicating that, in addition to abusing Alden, Mother had acted aggressively toward Jessie on numerous past occasions. Alden and Victoria both reported that they had seen Mother pull Jessie’s hair. Alden stated that he had seen Mother slap Jessie in the face and hit her “a lot.” He also said that, on some occasions, he had tried to intervene. Although Alden had never seen bruising, he had seen “imprints on her arm that appear[ed] to be [from] their mother grabbing her arm.”

The DCFS reports also contain evidence that Jessie was afraid her Mother might hit her. Alden told a social worker “there were times when Jessie would arrive home with her mother and state ‘I think my Mom’s going to hit me.’” According to Alden, “Jessie would make those kind of comments ‘like if she didn’t finish her homework.’”

There is also evidence that Mother had difficulty controlling her temper. Alden told DCFS that Mother had a temper that she “can’t control.” According to Alden, if he tried to stand up for himself, it only made Mother angrier. Once a confrontation began, Alden would not fight back because Mother would “take it too far.” Victoria corroborated these statements, explaining that although Mother tried “very hard to take care of her kids . . . she has a short temper [that] seems to be getting worse.” As

summarized by the DCFS social worker, the evidence showed that Mother was “quick to anger and resorts to physical abuse when regular discipline is ineffective.”

Finally, there is evidence in the record demonstrating that Mother did not accept responsibility for her conduct or acknowledge that she had engaged in any wrongdoing. Mother told DCFS that she became physical with Alden because she had to show that she was the “upper authority” and that “she meant business.” During her interviews with DCFS, Mother appeared to be in “denial” about her behavior and took “little if any responsibility for” the injuries Alden suffered when he fell into the fish tank. Instead, she blamed Victoria and Alden.

In sum the DCFS reports contain substantial evidence showing that: (1) on several past occasions, Mother had abused Alden and used physical force on Jessie; (2) Jessie was worried that Mother would hit her for trivial misconduct, such as not completing her homework; (3) Mother had difficulty controlling her temper; and (4) Mother failed to acknowledge that using physical force on her children was inappropriate and blamed the February incident on her son and her grandmother. Considered together, this evidence is adequate to support the juvenile court’s conclusion that Jessie faced a substantial risk of harm.

Mother, however, argues that the juvenile court did not adequately consider “evidence demonstrate[ing that] . . . Alden and Jessie were two very different children who presented very different parenting issues.” Mother contends that because Jessie was only nine years old and had not engaged in the type of oppositional behavior displayed by Alden, there was little risk that Mother would abuse her. In effect, Mother is asking this court to re-weigh the evidence, which we may not do. (*In re E.H.* (2003) 108 Cal.App.4th 659, 669 [when reviewing jurisdictional finding under section 300, appellate court may not “reweigh the evidence, nor do we consider matters of credibility”].) Although it is true that Mother told DCFS Jessie did not engage in the same sort of misconduct as Alden, the juvenile court was justified in concluding that such evidence was outweighed by the other evidence in the record. (See *Megan S.*, *supra*, 104

Cal.App.4th at p. 251 [If there is substantial evidence to support the juvenile court's order, we must uphold the order even if other evidence supports a contrary conclusion].)

We therefore conclude that substantial evidence supported the court's finding that it had jurisdiction over Jessie pursuant to section 300, subdivision (j). Because the court had jurisdiction over Jessie under subdivision (j), we need not consider whether the evidence also supported jurisdiction over Jessie under subdivision (b). (See *In re Alexis E.* (2009) 171 Cal.App.4th 438, 451 ["a reviewing court can affirm the juvenile court's finding of jurisdiction over the minor if any one of the statutory bases for jurisdiction that are enumerated in the petition is supported by substantial evidence. . . . [T]he reviewing court need not consider whether any or all of the other alleged statutory grounds for jurisdiction are supported by the evidence"].)

b. There was substantial evidence supporting the juvenile court's jurisdictional order regarding Alden

Mother argues that Alden does not qualify as a dependent under section 300, subdivision (j) because there is no evidence in the record indicating that Mother abused or neglected Jessie. (See *Ashley B.*, *supra*, 202 Cal.App.4th at p. 981 [subdivision (j) requires evidence showing "the minor's sibling has been abused or neglected"].) Although Mother challenges the court's jurisdictional finding under subdivision (j), the court also found jurisdiction over Alden under section 300, subdivisions (a) and (b). Mother does not dispute that there is sufficient evidence to support the court's finding that Alden qualified as a dependent under each of these subdivisions. A review of the record supports Mother's concession.

Section 300, subdivision (a) provides jurisdiction where "[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian." There is substantial evidence that Mother inflicted serious harm on Alden and that she might do so again in the future. As discussed above, Alden and Victoria both stated that Mother had slapped and punched Alden, and struck him with cords, hangers and other objects that left bruises and marks. The evidence also showed that Mother could not control her temper and that

her anger management problems were “getting worse.” Given Mother’s inability to control her anger, and her past instances of inflicting bruises and other marks on Alden, the juvenile court properly concluded that Alden qualified as a dependent under subdivision (a).

Section 300, subdivision (b), provides jurisdiction where “[t]he child has suffered . . . serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child.” The DCFS reports demonstrate that, on February 19, 2011, Mother pushed Alden, which caused him to fall into a glass fish tank and severely lacerate his arm. Although Mother alleges that she did not intend to harm Alden, the record shows she did nothing to help him after the allegedly unintentional harm occurred. According to Alden, Mother didn’t “care about the bleeding.” Instead, she told Alden to call Victoria and immediately left the house with Jessie. Alden’s wounds required 15 stitches. The fact that Mother left her injured child lying in a pile of broken glass, bleeding from the arm, constitutes substantial evidence that Alden qualified as a dependent under subdivision (b).

Because Mother concedes (and a review of the record confirms) that the juvenile court properly found that Alden qualified as a dependent of the court under section 300, subdivisions (a) and (b), we need not consider whether jurisdiction was also appropriate under subdivision (j). (See *Alexis E.*, *supra*, 171 Cal.App.4th at p. 451.)

B. The Juvenile Court’s Jurisdictional Order was Supported by Substantial Evidence

Mother argues that, regardless of whether there was substantial evidence to support the juvenile court’s jurisdictional orders, “the dispositional order removing custody of both children from mother should be reversed [because t]he evidence was insufficient to support a finding under section 361 (c).”

1. Summary of applicable law and standard of review

Before the juvenile court may order a child physically removed from his or her parent, it must find, by clear and convincing evidence, that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional

well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. . . . The court shall . . . consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain physical custody" (§ 361, subd. (c)(1).)

"The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child." (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136 [disapproved on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6].) "In this regard, the court may consider the parent's past conduct as well as present circumstances." (*In re Cole C.* (2009) 174 Cal.App.4th 900, 917 (*Cole C.*).) "The juvenile court has broad discretion to determine what would best serve and protect the child's interest and to fashion a dispositional order in accordance with this discretion." (*In re Jose M.* (1988) 206 Cal.App.3d 1098, 1103-1104.)

We review a dispositional order under "the substantial evidence test, . . . bearing in mind the heightened [clear and convincing] burden of proof" that is required to remove a child from a parent's residence. (*In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.)

2. *There was sufficient evidence to support the court's finding that children would face a substantial danger of physical harm if left in Mother's custody*

Except for the burden of proof, there is a close overlap between a finding of jurisdiction based on a substantial risk of serious physical harm under section 300 and a removal finding at disposition based on a substantial danger to the physical health, safety and protection of the child under section 361, subdivision (c)(1). (See *Rocco M., supra*, 1 Cal.App.4th at p. 826 ["Since the evidence warranted a finding of substantial risk of serious physical injury, it also appears to have supported a finding under section 361 . . . of a substantial danger to the minor's physical health"].) As discussed above, the record contains substantial evidence that: (1) Mother has abused and neglected Alden and used physical force against Jessie; (2) the children are afraid to annoy or stand up to their

Mother because they are afraid she will hit them; (3) Mother is unable to control her temper and these problems appear to be getting worse; and (4) Mother has failed to acknowledge any wrongdoing and believes her use of physical force is justified.

Considered together, this constitutes substantial evidence that Alden and Jessie would face substantial danger to their physical health and safety if left in Mother's custody.

Mother, however, argues that that the juvenile court's "substantial danger" finding improperly relied on a social worker's subjective beliefs about the use of corporal punishment. In support, Mother cites a paragraph in the detention report stating the following: "After completing the SDM risk assessment, the risk level was determined to be moderate. [The social worker] utilized a discretionary override and the final risk level was high. A discretionary override was utilized because although there was only one referral history for the family, it was reported by child, Alden and maternal great grandmother, Victoria, that physical abuse has existed between mother and Alden through the years." Mother argues that, under *In re Jasmine G.* (2000) 82 Cal.App.4th 282 (*Jasmine G.*), the "social worker's attitudes and beliefs [about corporal punishment] which conflicted with mother's in this case did not constitute clear and convincing evidence of a substantial danger to Alden and Jessie. Mother's belief in the validity of corporal punishment was not evidence of substantial danger." We find no merit in this argument.

First, the cited text of the detention report demonstrates that the social worker did not use a discretionary override of the SDM risk assessment because of any subjective belief about the propriety of corporal punishment. Instead, the social worker utilized a discretionary override because Mother's referral history did reflect the numerous instances of prior abuse that had gone unreported.

Second, the holding in *Jasmine G.* has no relevance here. In that case, DCFS filed a section 300 petition alleging that parents had used corporal punishment on their daughter that left marks on her buttocks and the upper backs of her legs. The juvenile court ordered that the child be detained and set a disposition hearing. The evidence at the disposition hearing showed that, since the child's initial detention, "[b]oth parents had

forsworn corporal punishment of teenagers. Both expressed remorse for having used corporal punishment on [their daughter]. Both had attended parenting classes, and both had undergone therapy to improve their parenting skills. [The child] had no fear of either. One therapist opined it was totally safe to return the child and the other simply had ‘no recommendation’” (*Jasmine G.*, *supra*, 82 Cal.App.4th at pp. 288-289.) Despite this evidence, the juvenile court ordered the child removed from the parents’ custody based on a “social worker’s opinion that parents have not sufficiently internalized proper parenting skills.” (*Id.* at p. 285.)

The appellate court reversed, holding that “the subjective belief of the social worker that the parents ‘lack[ed] understanding of their responsibility and their roles in the incident that brought [the child] to social service agency’s attention’” was “insufficient” to support removal. (*Jasmine G.*, *supra*, 82 Cal.App.4th at p. 289.) The court explained that “[i]f a social worker’s belief that parents had not sufficiently ‘internalized’ parenting skills were enough to constitute clear and convincing evidence of substantial danger, section 361 would be effectively rendered a nullity, as social workers would become the de facto highest power in determining whether parents have their children returned to them.” (*Ibid.*)

Unlike *Jasmine G.*, there is no evidence in this case that Mother has forsworn using physical force against her children, acknowledged her wrongdoing or attended any form of counseling or other services. Nor is there any evidence indicating that a therapist or other trained professional has concluded that returning the children to the home would be safe. Thus, *Jasmine G.* has little if any relevance to the circumstances presented here.

We further note that, contrary to Mother’s reading of the case, *Jasmine G.* did not hold that a parent’s “belief in the validity of corporeal punishment” can never qualify as “evidence of substantial danger.” Rather, it held that “a social worker’s belief that parents had not sufficiently ‘internalized’ parenting skills” was not enough “to constitute clear and convincing evidence of substantial danger.” (*Jasmine G.*, *supra*, 82 Cal.App.4th at pp. 285, 289.) To the extent a parent believes in the validity of corporal

punishment that results in injury to the child, such evidence may be considered in determining whether removal is justified under section 361, subdivision (c).

3. There was substantial evidence that no reasonable alternative to removal existed

Mother argues that the juvenile court did not adequately consider alternative, reasonable means by which the children's physical health could be protected without removing them from her home. "Before the court removes a child from parental custody, it must find there are no reasonable means by which the child's physical health can be protected without removal. [Citation.] Although the court must consider alternatives to removal, it has broad discretion in making a dispositional order. [Citation.]" (*Cole C.*, *supra*, 174 Cal.App.4th at p. 918.)

Substantial evidence supports the juvenile court's finding that there were no reasonable means to protect the children other than removal. As summarized above, multiple witnesses testified that Mother could not control her temper and that these problems were getting worse. Between the time of detention and the time of the dispositional hearing, Mother did not participate in any counseling or other services to address her anger management issues. Alden's great grandmother expressed concerns about the safety of leaving Alden in Mother's custody and Mother told a social worker that she was currently "not comfortable" with Alden returning to her home.

The record also includes evidence that Mother believed her aggressive conduct toward Alden was justified and accepted little responsibility for the events that transpired on February 19. Given the extensive evidence of Mother's anger issues and her failure to acknowledge any wrongdoing, the juvenile court reasonably concluded that there were no reasonable alternatives to removing the children from her custody pending her successful participation in reunification services.

Mother, however, contends that, rather than removing the children from her custody, the court should have "placed conditions on mother's continued custody of her children under section 361(a), such as participating in parenting education and counseling, to ensure that problems did not reoccur." Mother's argument ignores the fact

that there is substantial evidence showing that, currently, the children would be at risk of physical harm if left in her custody. At this point it is unclear whether Mother's participation in parenting education and counseling will successfully reduce that risk because Mother has not yet begun such services.

Mother further contends that, in regard to Jessie, the evidence showed that the parents were "cooperatively co-parenting" and "capable of resolving the issues which brought this matter to the court's attention on its own." In support, Mother cites the fact that she and Jessie's father "had verbally agreed for Jessie to live with him since January 2011 and have weekend visits with mother so mother could concentrate on completing her education." The fact that Mother and Jessie's father successfully agreed to father's custody is simply not relevant to determining whether Jessie faced a substantial danger of harm when left in Mother's custody.³

DISPOSITION

We affirm the juvenile court's jurisdictional and dispositional orders.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.

³ DCFS contends that Mother has forfeited any challenge to the disposition order because she never objected to the removal or placement of her children when she was before the juvenile court. Mother, however, contends that forfeiture is inapplicable because she merely agreed to submit on the DCFS reports. (See *In re Richard K.* (1994) 25 Cal.App.4th 580, 588-589 [forfeiture applies where parent submits to a "social worker's recommendations," but does not apply where parent merely "'submit[s]' on a social services report"].) Because we conclude that the juvenile court's disposition order was supported by substantial evidence, we need not address the issue of forfeiture.